

COPY

CLERK U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIF.  
LOS ANGELES

2013 FEB 11 PM 2:03

FILED

1 Tyler J. Woods, Bar No. 232464  
 2 [twoods@trialnewport.com](mailto:twoods@trialnewport.com)  
 3 Scott J. Ferrell, Bar No. 202091  
 4 [sferrel@trialnewport.com](mailto:sferrel@trialnewport.com)  
 5 NEWPORT TRIAL GROUP  
 6 895 Dove Street, Suite 425  
 7 Newport Beach, CA 92660  
 8 Tel: (949) 706-6464  
 9 Fax: (949) 706-6469

10  
 11 Attorneys for Plaintiff ECLIPSE IP LLC

12

13  
 14 UNITED STATES DISTRICT COURT  
 15 CENTRAL DISTRICT OF CALIFORNIA

16

17 ECLIPSE IP LLC,

18 Plaintiff,

19 vs.

20 VOLKSWAGEN GROUP OF AMERICA,  
 21 INC.,

22 Defendant.

23 Case No.: 5:12cv02087-PSG(SP)

24 **FIRST AMENDED COMPLAINT  
 25 FOR PATENT INFRINGEMENT**

26 **JURY TRIAL DEMANDED**

27 Complaint Filed: N/A  
 28 Trial Date: N/A

29 **FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

30 Plaintiff Eclipse IP LLC (“Eclipse”), by counsel, complains of defendant  
 31 Volkswagen Group of America, Inc. (“Volkswagen”), as follows:

32 **NATURE OF LAWSUIT**

33 1. This is a suit for patent infringement arising under the patent laws of the  
 34 United States, Title 35 of the United States Code § 1 *et seq.* This Court has exclusive  
 35 jurisdiction over the subject matter of the Complaint under 28 U.S.C. §§ 1331 and  
 36 1338(a).

37 **PARTIES AND PATENTS**

38 2. Eclipse is a company organized and existing under the laws of Florida and  
 39 having a principal place of business address at 115 NW 17th Street, Delray Beach,  
 40 Florida 33444.

3. Eclipse owns all right, title, and interest in and has standing to sue for infringement of United States Patent No. 7,482,952 (“the ‘952 patent”), entitled “Response Systems and Methods for Notification Systems for Modifying Future Notifications” (Exhibit A); and United States Patent No. 7,479,900 (“the ‘900 patent”), entitled “Notification Systems and Methods that Consider Traffic Flow Predicament Data” (Exhibit B) (collectively, “the Eclipse Patents”).

4. On information and belief, Volkswagen is a corporation existing under the laws of New Jersey.

5. On information and belief, Volkswagen does regular business in this judicial district and has committed acts of infringement in this judicial district.

## JURISDICTION AND VENUE

6. This Court has personal jurisdiction over Volkswagen because it does regular business in this District; is operating and/or supporting products or services that fall within one or more claims of Eclipse's patents in this District; and has committed the tort of patent infringement in this District.

7. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(d) and 1400(b).

## DEFENDANT'S ACTS OF PATENT INFRINGEMENT

8. Volkswagen imports, markets, distributes, and/or sells vehicles with navigation systems including, among others, the “RNS 315 Navigation System,” which offer “traffic information” and “traffic jam avoidance and automatic re-routing.”

9. Volkswagen imports, markets, distributes, and/or sells vehicles with navigation systems that infringe one or more claims of the '952 patent through, among other activities, the use of the navigation systems to: determine changes in schedule relating to an intended destination; notify the driver of the change in schedule; and allow the driver to make a confirmation, change, or cancellation with respect to the notification.

1       10. Volkswagen imports, markets, distributes, and/or sells vehicles with  
2 navigation systems that infringe one or more claims of the '900 patent through, among  
3 other activities, the use of the navigation systems: schedule notifications relating to  
4 arrival or departure of the vehicle; monitor traffic flow predicament data relating to a  
5 vehicle's intended route; and determine whether or not to reschedule notifications based  
6 upon such data.

7       11. Volkswagen's vehicle navigation systems cannot be used without these  
8 core functionalities and are not intended to be. Accordingly, they are not capable of  
9 substantial noninfringing uses.

10      12. Eclipse sent a letter to Volkswagen, dated September 5, 2012, in which  
11 Eclipse informed Volkswagen of the existence of the '900 and '952 patents, alleged that  
12 Volkswagen's navigation systems infringe these patents, and offered to engage in  
13 licensing negotiations. Counsel for Volkswagen acknowledged receipt of this letter on  
14 September 14, 2012.

15      13. Prompted by Eclipse's letter, counsel for Volkswagen contacted counsel  
16 for Eclipse. The parties engaged in preliminary discussion but never made substantive  
17 progress toward a suitable licensing arrangement.

18      14. Instead, with knowledge of the '900 and '952 patents and its infringement  
19 and in disregard of Eclipse's patent rights, Volkswagen chose to continue to import,  
20 advertise, market, distribute, and/or sell the infringing products.

21      15. Accordingly, Volkswagen has acted willfully, with knowledge that the  
22 infringing components had been and would be especially made or adapted for use in an  
23 infringing manner, and with the intent to induce others to infringe Eclipse's patents.

24      16. Volkswagen has knowingly infringed one or more claims of the '952  
25 patent through, among other activities, the use of navigation systems in its vehicles to:  
26 determine changes in schedule relating to an intended destination; notify the driver of  
27 the change in schedule; and allow the driver to make a confirmation, change, or  
28 cancellation with respect to the notification.

17. Volkswagen has actively induced and/or contributed to the infringement by others of one or more claims of the '952 patent through, among other activities, continuing to manufacture, distribute, and sell vehicles equipped with the infringing navigation systems to its customers after having received notice of its infringement of the '952 patent.

18. Volkswagen has knowingly infringed one or more claims of the '900 patent through, among other activities, the use of navigation systems in its vehicles to: schedule notifications relating to arrival or departure of the vehicle; monitor traffic flow predicament data relating to a vehicle's intended route; and determine whether or not to reschedule notifications based upon such data.

19. Volkswagen has actively induced and/or contributed to the infringement by others of one or more claims of the '900 patent through, among other activities, continuing to manufacture, distribute, and sell vehicles equipped with the infringing navigation systems to its customers after having received notice of its infringement of the '900 patent.

20. Through direct, induced, and contributory infringement Volkswagen has injured Eclipse, and Eclipse is entitled to recover damages adequate to compensate it for such infringement, but in no event less than a reasonable royalty.

## CLAIMS FOR RELIEF

**COUNT I**

**(Patent Infringement of U.S. Patent No. 7,482,952**

Under 35 U.S.C. § 271, *et seq.*)

21. Eclipse incorporates by reference and realleges the allegations set forth in paragraphs 1 through 20 above and incorporates them by reference.

22. On January 27, 2009, United States Patent No. 7,482,952, entitled “Response Systems and Methods for Notification Systems for Modifying Future Notifications” was duly and legally issued by the United States Patent and Trademark Office. Eclipse is the owner of the entire right, title and interest in and to the ‘952

patent. A true and correct copy of the '952 patent is attached as Exhibit A to this complaint.

23. Eclipse is informed and believes, and thereupon alleges, that Volkswagen: (1) has infringed and continues to infringe claims of the '952 patent, literally and/or under the doctrine of equivalents, and/or (2) has contributed and continues to contribute to the literal infringement and/or infringement under the doctrine of equivalents of claims of the '952 patent, and/or has actively induced and continues to actively induce others to infringe claims of the '952 patent, literally and/or under the doctrine of equivalents, in this district and elsewhere in the United States.

## **COUNT II**

**(Patent Infringement of U.S. Patent No. 7,479,900**

Under 35 U.S.C. § 271, *et seq.*)

24. Eclipse incorporates by reference and realleges the allegations set forth in paragraphs 1 through 15 above and incorporates them by reference.

25. On January 20, 2009, United States Patent No. 7,479,900, entitled “Notification Systems and Methods that Consider Traffic Flow Predicament Data” was duly and legally issued by the United States Patent and Trademark Office. Eclipse IP is the owner of the entire right, title and interest in and to the ‘900 patent. A true and correct copy of the ‘900 patent is attached as Exhibit B to this complaint.

26. Eclipse is informed and believes, and thereupon alleges, that Volkswagen: (1) has infringed and continues to infringe claims of the '900 patent, literally and/or under the doctrine of equivalents, and/or (2) has contributed and continues to contribute to the literal infringement and/or infringement under the doctrine of equivalents of claims of the '900 patent, and/or has actively induced and continues to actively induce others to infringe claims of the '900 patent, literally and/or under the doctrine of equivalents, in this district and elsewhere in the United States.

111

111

## PRAYER FOR RELIEF

WHEREFORE, Plaintiff Eclipse asks this Court to enter judgment against the defendant and against each of the defendant's respective subsidiaries, affiliates, agents, servants, employees and all persons in active concert or participation with it, granting the following relief:

(a) An award of damages adequate to compensate Eclipse for the infringement that has occurred, together with prejudgment interest from the date infringement of the Eclipse Patents began;

(b) An award to Eclipse of all remedies available under 35 U.S.C. §§ 284 and 285, including enhanced damages up to and including trebling of Eclipse's damages for Volkswagen's willful infringement, and reasonable attorneys' fees and costs; and

(c) Such other and further relief as this Court or a jury may deem proper and just.

**JURY DEMAND**

Eclipse demands a trial by jury on all issues so triable pursuant to Federal Rule of Civil Procedure 38.

Respectfully submitted this 11<sup>th</sup> day of February, 2013.

## NEWPORT TRIAL GROUP

By:

Tyler J. Woods  
Attorney for Plaintiff  
ECLIPSE IP LLC

## **CERTIFICATE OF SERVICE**

I hereby certify that on February 11, 2013, I caused a true and correct copy of the foregoing document to be served on the following counsel in the manner indicated:

Via U.S. Mail

Ryan K. Yagura  
O'MELVENY & MYERS LLP  
400 South Hope Street  
Los Angeles, CA 90071  
Telephone: 213.430.6189  
Facsimile: 213.430.6407  
[ryagura@omm.com](mailto:ryagura@omm.com)

Attorneys for Defendant  
Volkswagen Group of America, Inc.

Michael J. Lennon  
KENYON & KENYON LLP  
One Broadway  
New York, New York 10004  
Phone: 212.425.7200  
Fax: 212.425.5288  
[mlennon@kenyon.com](mailto:mlennon@kenyon.com)